

No. 9(1)81-6Lab/10641.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s S. J. Knitting and Finishing Mills Pvt. Ltd., 13/7, Mathura Road, Faridabad :—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 545 of 1980

between

SHRI SURYA NARAIN, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S. S.J.
KNITTING AND FINISHING MILLS PVT. LTD., 13/17, MATHURA ROAD, FARIDABAD

Present :—

Shri G.S. Chaudhry for the workman.

Shri B.R. Grover for the respondent.

AWARD

This reference No. 545 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—
vide his order No. ID/58560, dated 1st December, 1980 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Surya Narain, workman and the respondent management of M/s S.J. Knitting and Finishing Mills Pvt. Ltd., 13/7, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Surya Narain was justified and in order ? If not, to what relief is he entitled ?

After receiving this reference, notices were issued to the parties and filed their pleadings on the fixed date. On the pleadings of the both parties, following issues were framed :—

(i) Whether the reference is bad as the service of the workman have never been terminated by the management ? If so, to what effect ?

(ii) As per reference.

My Predecessor had ordered that issue No. 1 shall be treated as preliminary issue. The case of the claimant is that he was appointed on 8th January, 1976 as helper at the salary of Rs. 295 per month and was terminated on 26th August, 1980 without any reason or notice or enquiry against him. The case of the respondent-management is that there is a charge-sheet of serious and grave misconduct against the workman for which the domestic enquiry is pending instead of taking part in the enquiry, the workman is started being absent without any leave. Further stated that the name of the workman is still on the rolls of the respondent-management and his name has not struck off till today. So there is no existence of the Industrial Dispute and the reference is premature. The workman has denied all these facts in his rejoinder and stated that no enquiry is pending against the workman and the respondent-management previously committed to take the workman on duty before the Conciliation Officer during the Conciliation Proceeding but when the claimant reached on the gate to join his duty, the respondent refused to take him on the duty and in this way committed breach of trust and thereafter the workman approached the Conciliation Officer and he submitted the failure report to the Government afterwards. So the reference is not premature. The respondent in this case produced no document except one oral witness Shri Ram Nath Sharda as MW-1 and closed his case. The workman has also not produced any documentary evidence except his statement as WW-1 and closed his case. So my finding on issue is as under :—

It is a case of its own nature before me in which no documentary evidence is produced by any of the parties. The witness of the respondent Shri Ram Nath Sharda as MW-1 has stated in his statement that he knows the claimant. He used to work in the factory. There was strike in the factory on 19th July, 1980 which was ended on 9th August, 1980. The claimant went on strike and did not come in the factory after ending the strike. He further stated that the name of the claimant is still on the rolls of the factory. He has stated in his cross-examination that the charge-sheet was given to the claimant and after that he is not coming in the factory. He has further stated that I do not know whether he was given any letter for his absence. He has stated that the claimant was suspended and again said that he was not suspended. He admitted in his cross examination that there is no pending enquiry against the workman. The workman had not come after the strike. He further stated in his cross-examination that I did not know whether respondent-management issued any letter to the workman for his absence or for coming on

duty. They admitted the demand notice sent by the workman. The workman put up his case in his statement as WW-1. The workman was not cross examined by the respondent management's representative as on the date of the workman evidence none was present to appear before the Court to pursue his case. The workman's evidence was recorded in the absence of any representative from the management. The respondent management has not objected on the next date of hearing when he came present, nor he gave any application for cross examined of the workman. It is typical case. The respondent management has not struck off the name of the workman from his roll till today as stated by the witness MW-1 and admitted in the written statement by the respondent management though the respondent management has not produced any Standing Order applicable in their factory but the Standing Order are presumed to be of the factory. There is a provision in the Model Standing Order under para 16(4) which is as under :-

"If the workman remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended he shall lose his lien on his appointment unless (a) he returns within 10 days of the commencement of the absence or the expiry of the leave and (b) explain to the satisfaction of the Manager the reason of his absence or his inability to return on the expiry of the leave, as the case may be.

In case he loses his lien on his appointment, he shall be entitled to be kept on the Badli list where there is Badli system."

Even in the general law, the workman cannot be on the roll of the factory for such a long time without any reasons. The respondent management has stated in his written statement that there is charge-sheet against the claimant for certain acts for serious and grave mis-conduct for which domestic enquiry is pending. It was the duty of the respondent management to produce a copy of the charge-sheet and any domestic enquiry pending before them which they fail to produce. It shows that there is no charge-sheet against the workman and no domestic enquiry is pending. The respondent witness MW-1 has admitted in his cross examination that there is no enquiry pending against the workman. It is a clear proof that the written statement is false and cannot be believed. The fact is which I gathered from the arguments of the parties that the workman went on strike and after that he was not allowed to resume his duty and the workman is without job since then. The representative of the respondent has not replied of the argument that why they are continuing the name of the claimant on roll and marking him absent. The representative of the management cited 1970 Labour Industrial Case page 421 and 1968 Labour Industrial Cases pages 526 and 851 to prove his case but citation are not applicable in the present fact of the case.

So issue No. 1 whether the reference is bad as the service of the workman have never been terminated by the management goes in favour of the workman and against the respondent management as respondent management has refused to accept him on duty. According to the statement of the workman he used to go on the gate but he was not allowed to go in. What workman could do in these circumstances. It is new method adopted by the management to terminate the workman from services. The respondent is powerful and can deny any workman in this way and marked absent in his register makes no case of the respondent that they have not terminated the services of the workman. The respondent management should have struck off the name of the workman under the rules and Standing Order after expiry of certain period. The witness of the respondent MW-1 has given no reply on the suggestion of the workman's representative that whether they have issued any letter to the workman for his absence or to call him on duty. The respondent management has not put up on file any letter to prove that they have called the workman for duty. It shows that the respondent management has done nothing except making the claimant absent in his record. It was the duty of the respondent management to issue some letter to the workman when he was absent from duty without permission or without leave because the claimant was an old employee of the respondent management as stated in his demand notice. He is employed in the respondent company from 8th January, 1976 which is not denied by the respondent in the written statement or by witness of the respondent. So this issue is decided in favour of the workman against the management, and the reference is not bad in the eye of law.

After deciding issue No.1 in favour of the workman there is nothing left to discuss for issue No. 2 because denial to accept the workman on duty is equivalent to the termination although there is no written order for claimants termination yet the denial to give duty to the workman is equivalent to the termination.

So this act of the respondent management is against law and unjustified. So the workman is entitled for his re-instatement with full back wages and continuity of service No order as to costs. This may be read an answer of this reference.

Dated the 6th September, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endst. No. 2754, dated 14th September, 1981

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required Under Section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.